

## **REMARKS**

### **I. Status of Claims**

After the above amendments, claims 1-10 and 12-20 are pending. Claims 1-2, 7, 10, 12-19 are amended. Claim 11 is canceled and claim 20 is newly added. Claims 1-2, 7, 10, and 15 are independent.

In the Office Action dated November 23, 2005, the Examiner rejected claims 1-19 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Claims 1, 4-5, 9-10, and 14-15 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,026,379 to Yoon. Claims 2-3, 6-8, 11-13 and 16-19 are indicated allowable if rewritten to overcome the rejections under 35 U.S.C. § 112 and amended to include all of the limitations of the base claim and any intervening claims.

Applicant has carefully reviewed the rejections, and respectfully requests reconsideration in view of the above amendments and the following remarks.

### **II. Information Disclosure Statement (IDS)**

Applicant is re-submitting the IDS dated September 12, 2003 for the Examiner's consideration and entry. Initially, the Examiner objected to the IDS in the June 8, 2005 Office Action. These objections were addressed in the response Applicant submitted on September 8, 2005, however, an initialed copy was not received with the November 23, 2005 Office Action. Moreover, the November 23, 2005 Office Action did not address the September 12, 2003 IDS or Applicant's September 8, 2005 remarks regarding the same.

### **III. Rejections under 35 U.S.C. § 112**

The preamble of Claim 1 has been amended to address any perceived ambiguity. Accordingly, this rejection is moot.

**IV. Rejections under 35 U.S.C. § 102(b)**

Claims 1, 4-5, 6, 8-9, and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,026,379 to Yoon. The undersigned submits that claim 1 is at least patentable over the Yoon '379 patent because claim 1 recites "...a plurality of legs attached to the ring portion, each of legs being movable between an open position and a closed position to compress the tissue without a substantial change in configuration of the ring ..." (emphasis added)

The Yoon '379 patent, in contrast, does not disclose a ring portion and a plurality of legs which can move between the open and closed positions without a substantial change in configuration of the ring. As stated in the Yoon '379 patent "Summary of the Invention," it is an object of the invention to provide an improved, flexible, and resilient or stretchable ligature for an anatomical tubular structure which has sufficient elastic memory to accomplish inclusion. See specification at 2:12-14. This can be clearly seen in FIGS. 21-23 of the Yoon '379 patent which shows a clip 178 having a plurality of elastic memory bases 180, 182 (interpreted by the Examiner as rings) and a pair of legs 184 and 186 connecting these bases. In order for this clip 178 to function, the bases 180 and 182 must deform to allow the legs 184 and 186 to move towards or away from one another.

Applicant's claim 1, comparatively, recites a ring wherein each of legs are movable between open and closed positions without a substantial change in configuration of the ring.

Accordingly, for at least this reason claim 1, as well as dependent claims 4-6, 8-9, and 20, are allowable over the Yoon '379 patent.

**V. Allowable Subject Matter**

Claims 2, 7, 10, and 15 overcome the rejections under 35 U.S.C. § 112 and are rewritten to include all of the limitations of the base claim and the intervening claims. Therefore, claims 2, 7, 10, and 15, as well as dependent claims 3, 12-14, and 16-19 are also allowable.

**VI. Conclusion**

In view of the above amendments and remarks, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

The Commissioner is authorized to charge any fees or credit any overpayments which may be incurred in connection with this paper under 37 C.F.R. §§ 1.16 or 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

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